

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LJS&G, LTD., a Nevada Corporation, d/b/a/)
LEACH JOHNSON SONG & GRUCHOW,)

Plaintiff,

VS.

Z's, a Nevada Corporation, *et al.*,)

Defendants,

UNITED STATES OF AMERICA,)

Cross-Claim Plaintiff,

VS.)

LAKE LAS VEGAS MASTER)
ASSOCIATION,)

Cross-Claim Defendant.)

Case No.: 2:16-cv-01150-GMN-DJA

ORDER

Pending before the Court are the United States of America’s (the “Government’s”) Motion for Default Judgment, (ECF No. 53), and Motion for Disbursement of Funds, (ECF No. 55). No parties filed a response. For the reasons discussed below, the Court **GRANTS** the Government’s Motions.

I. BACKGROUND

This case stems from a March 21, 2013 foreclosure on real property located at 31 Rue Mediterra, Henderson, Nevada (the “Property”), which Z’s Corporation had owned. (Compl. Interpleader 1:26–3:17, Ex. 1 to Pet. Removal, ECF No. 1-1). The foreclosure occurred due to outstanding fees owed to the homeowners’ associations for the Property: South Shore

1 Residential Community Association (“SSRCA”) and Lake Las Vegas Master Association
2 (“LLVMA”). (*Id.* 4:7–11).

3 At the time of the foreclosure sale, the homeowners’ associations were not the only
4 parties with liens on the Property. The Government had filed a Notice of Federal Tax Lien
5 against the Property on January 5, 2010; and other parties may have also had an interest, such
6 as Leasecomm Corporation, Lake Las Vegas Resort Association, the City of Henderson, and
7 Clark County. (*Id.* 1:26–3:17). Accordingly, when \$62,325.30 remained in trust after the
8 foreclosure sale, Plaintiff LJS&G, LTD (“Plaintiff”) filed a Complaint for Interpleader in the
9 Eighth Judicial District Court for the District of Nevada on January 15, 2016, so that the court
10 could properly adjudicate the various parties’ rights to the trust. (*Id.* 4:11–13). After Plaintiff’s
11 deduction of \$2,852.87 from the trust for its attorney’s fees and costs associated with the
12 interpleader proceeding, a final fund amount of \$59,472.43 remained in the court’s registry
13 (“Interpleaded Funds”). (State Court Pleadings, Ex. 2 to Pet. Removal, ECF No. 1-2).

14 On May 23, 2016, the Government removed Plaintiff’s Complaint for Interpleader to
15 this Court pursuant to 28 U.S.C. § 1442 because it was a civil action against the United States
16 in which the United States may have a right to property. (Pet. Removal 2:1–3:4). On April 24,
17 2019, the Government filed a Motion requesting the Court’s distribution of the Interpleaded
18 Funds in the amount of \$59,472.43. (Mot. Disbursement 2:7–5:3, ECF No. 44). The Court
19 denied the Government’s Motion for Disbursement of Funds because the Government had not
20 secured, nor moved for, default judgment against the remaining claimants in this case who had
21 not appeared and had not actively litigated their claims (Leasecomm Corporation, Lake Las
22 Vegas Resort Association, and Z’s Corporation). (Order, ECF No. 46). The Government then
23 secured Clerk’s Entry of Default as to the claimants on September 10, 2019; and filed the
24 instant Motion for Default Judgment alongside its re-filed Motion for Disbursement of the
25 Interpleaded Funds. (Entry of Default, ECF No. 52)

1 **II. LEGAL STANDARD**

2 “The purpose of interpleader is for a stakeholder to ‘protect itself against the problems
3 posed by multiple claimants to a single fund.’” *Mack v. Kuckenmeister*, 619 F.3d 1010, 1024
4 (9th Cir. 2010) (quoting *Minn. Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977 (9th Cir. 1999)). An
5 interpleader action general involves a two-stage procedure. (*Id.*). “In the first stage, the district
6 court decides whether the requirements for rule or statutory interpleader action have been met
7 by determining if there is a single fund at issue and whether there are adverse claimants to that
8 fund.” (*Id.*) (quoting *Rhoades v. Casey*, 196 F.3d 592 (5th Cir. 1999)). “If the district court
9 finds that the interpleader action has been properly brought the district court will then make a
10 determination of the respective rights of the claimants.” (*Id.*).

11 **III. DISCUSSION**

12 **A. Default Judgment**

13 Obtaining a default judgment is a two-step process governed by Rule 55 of the Federal
14 Rules of Civil Procedure. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the
15 moving party must seek an entry of default from the clerk of court. Fed. R. Civ. P. 55(a).
16 Then, after the clerk of court enters default, a party must separately seek entry of default
17 judgment from the court in accordance with Rule 55(b). Fed R. Civ. P. 55(b). Upon entry of a
18 clerk’s default, the court takes the factual allegations in the complaint as true. Nonetheless,
19 while the clerk’s entry of default is a prerequisite to an entry of default judgment, a plaintiff
20 who obtains an entry of default is not entitled to default judgment as a matter of right. *Warner*
21 *Bros. Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004) (citation omitted).
22 Instead, whether to grant a default judgment is in the court’s discretion. *Id.* The Ninth Circuit
23 has identified several factors relevant in determining whether to grant default judgment,
24 including: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s
25 substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the

1 action; (5) the possibility of a dispute concerning material facts; (6) whether the default was
2 due to the excusable neglect; and (7) the strong public policy favoring decisions on the merits.
3 *Eitel*, 782 F.2d at 1471–72.

4 Upon reviewing the documents and pleadings on file in this matter, the Court finds that
5 the *Eitel* factors support entry of default judgment in favor of the Government and against Z’s
6 Corporation, Leasecomm Corporation, and Lake Las Vegas Resort Association. Those parties’
7 failure to respond or otherwise appear in a case prejudices the Government’s ability to pursue
8 its claims on the merits, and therefore satisfies the first *Eitel* factor. *See, e.g., Nationstar Mortg.*
9 *LLC v. Operture, Inc.*, No. 2:17-cv-03056-GMN-PAL, 2019 WL 1027990, at *2 (D. Nev. Mar.
10 4, 2019); *ME2 Prods., Inc. v. Sanchez*, No. 2:17-cv-667-JCM-NJK, 2018 WL 1763514, at *1
11 (D. Nev. Apr. 12, 2018).

12 Regarding the second and third *Eitel* factors, the Court finds that the Government’s
13 claim to the Interpleaded Fund is sufficiently pleaded and supported by evidence. Specifically,
14 the Government’s Answer asserts a claim to the Interpleaded Fund, alleging that the
15 Government provided “timely notice of and demand for payment” of the federal tax lien
16 assessments made upon Z’s as required by 26 U.S.C. § 6308; and Z’s failure to pay the
17 outstanding lien. (Answer ¶¶ 25–27, ECF No. 5). The Government then recorded its lien in the
18 Clark County Recorder’s Office on January 5, 2010. (*Id.* ¶ 28). Because a federal tax lien is
19 perfected at the time that the tax is assessed and continues in force “until the liability for the
20 amount so assessed . . . is satisfied or becomes unenforceable by reason of lapse of time,” the
21 Government’s actions demonstrate the merits of its claims over Z’s and other junior lienholders
22 on the property such as Leasecomm and Lake Las Vegas Resort Association. 26 U.S.C. § 6322;
23 *Premier Trust, Inc. v. Duvall*, 559 F. Supp.2d 1109, 1114 (D. Nev. 2008).

1 The fourth *Eitel* factor is neutral here. *See Standard Ins. Co. v. Asuncion*, 43 F. Supp. 3d
2 1154, 1157 (W.D. Wash. 2014) (discussing how the fourth *Eitel* factor is generally neutral for
3 interpleader actions).

4 The fifth *Eitel* factor, which concerns the possibility of a dispute regarding material
5 facts, favors the Government. Courts have recognized that, “[o]nce the clerk enters a default,
6 the well-pleaded factual allegations of the [moving party’s] complaint are taken as true, except
7 for those allegations relating to damages.” *ME2 Prods.*, 2018 WL 1763514, at *2 (quoting
8 *O’Brien v. United States*, No. 2:07-cv-00986-GMN-GWF, 2010 WL 3636171, at *4 (D. Nev.
9 Sept. 9, 2010)). Here, the Government secured entry of clerk’s default against the remaining
10 potential claimants who have neither disclaimed their interest nor appeared in this case. (Entry
11 of Default, ECF No. 52).

12 With respect to the sixth *Eitel* factor, the Court finds that the claimants who failed to
13 appear were not absent based on excusable neglect. Service on Z’s was attempted on April 14,
14 2016, and further investigation revealed Z’s was no longer in business. (Aff. Shannen Tavcar at
15 35, Ex. to Pet. Removal, ECF No. 1-1). Service on Leasecomm Corporation occurred in April
16 2016, yet Leasecomm has failed to appear in this action to date. (Summons at 39, Ex. to Pet.
17 Removal, ECF No. 1-1). Similarly, service on Lake Las Vegas Resort Association occurred in
18 April 2016, but the Association has yet to appear. The Clerk of Court thus entered default
19 against Z’s, Leasecomm, and Lake Las Vegas Resort Association on September 17, 2019.
20 (Entry of Default, ECF No. 52). Their failure to appear or otherwise file anything with respect
21 to this action during this time period counsels against a finding of excusable neglect. *See ME2*
22 *Prods.*, 2018 WL 1763514, at *3; *O’Brien*, 2010 WL 3636171, at *6.

23 The seventh and final *Eitel* factor concerns public policy considerations. While public
24 policy generally favors disposition on the merits, the Court concludes that default judgment is
25 appropriate in light of the other *Eitel* factors. The Court therefore grants the Government’s

1 Motion for Default Judgment, (ECF No. 53), as to Z's Corporation, Leasecomm Corporation,
2 and Lake Las Vegas Resort Association.

3 **B. Disbursement of Interpleaded Funds**

4 In light of the Court's grant of default judgment, the Government argues for
5 disbursement of the Interpleaded Funds because "there are no claimants to the interpleaded
6 fund other than the United States." (Mot. Disbursement 5:13-15, ECF No. 55). The only party
7 that actively litigated its interest against the Government was LLVMA, who the Court
8 dismissed on April 23, 2019, after granting a stipulation for dismissal from the parties. (Order,
9 ECF No. 43). The other potential claimants of the City of Henderson and Clark County
10 expressly disclaimed any interest to the interpleaded funds. (Notices of Disclaimer at 49, 51,
11 Ex. B to Pet. Removal, ECF No. 1-1); (Resp., ECF No. 9); (Notice, ECF No. 14); (Order, ECF
12 No. 38) (granting dismissal of Plaintiff).

13 The Court finds disbursement of the Interpleaded Funds to the Government is
14 appropriate here considering all potential claimants having either disclaimed an interest or
15 defaulted. *See, e.g., Prudential Ins. Co. of Am. v. Iturbide*, No. 8:18-cv-01325-JLS-ADS, 2019
16 WL 3249620, at *5 (C.D. Cal. Apr. 24, 2019) ("The Court finds such disbursal appropriate
17 because, upon entry of default judgment against Defendant Iturbide, there are no other
18 remaining claimants to the Proceeds."); *see Standard Ins. Co. v. Asuncion*, 43 F. Supp. 3d 1154,
19 1155 (W.D. Wash. 2014).

20 Nevertheless, upon review of the docket, the Court's records do not contain a Certificate
21 of Cash Deposit showing that the Interpleaded Funds were actually transferred from the District
22 Court of Clark County to this Court's registry. Instead, the docket shows that the Government
23 only served the Order for Transfer of Monies on Deposit to the Clark County Court, (ECF No.
24 28), but the Clark County Court has yet to comply with the transfer of funds. Accordingly, the
25 Government must contact the Clerk of the Court for the District Court of Clark County to

1 ensure the transfer of Interpleaded Funds to this Court. The Government shall have until
2 October 25, 2019, to file proof of the Certificate of Cash Deposit in this Court, or else a joint
3 status report. Upon the filing of a Certificate of Cash Deposit with this Court, the Clerk or
4 Court shall disburse the Interpleaded Funds to the Government.

5 **IV. CONCLUSION**

6 **IT IS HEREBY ORDERED** that the Government's Motion for Default Judgment,
7 (ECF No. 53), and Motion for Disbursement of Funds, (ECF No. 55), are **GRANTED**.

8 **IT IS FURTHER ORDERED** that the Government shall contact the Clerk of Court for
9 the District Court of Clark County to ensure the transfer of Interpleaded Funds to this Court.

10 **IT IS FURTHER ORDERED** that the Government shall have until October 25, 2019,
11 to file a Certificate of Cash Deposit in this Court, or else a joint status report.

12 **IT IS FURTHER ORDERED** that, upon the Government's filing of a Certificate of
13 Cash Deposition, the Clerk of Court shall disburse the Interpleaded Funds amounting to
14 \$59,472.43 to the United States, for application to the unpaid federal tax liabilities of Z's, a
15 Nevada Corporation, in a check made payable to the U.S. Department of Justice, with a
16 notation on check: CMN 2016101092, mailed as follows to:

17 U.S. Department of Justice
18 Attn: William E. Thompson
19 P.O. Box 310
20 Ben Franklin Station
21 Washington, DC 2004

22 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly
23 and close the case.

24 **DATED** this 29 day of September, 2019.

25 

Gloria M. Navarro, District Judge
United States District Court